

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 18th September, 2012

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W.P.(C) 5692/2008

DR. JASWINDER KAUR GAMBHIR

..... Petitioner

Through: Mr. Manoj Goel, Mr. Mayank
Goyal & Mr. Wajeeh Shafiq, Advs.

versus

U.O.I & ORS

..... Respondents

Through: Mr. Ashish Kumar, Adv. for MCI.
Mr. Amit Bansal & Ms. Manisha
Singh, Advs. for R-3/Delhi
University.
Mr. Arun Batta, Adv. for R-5.

AND

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W.P.(C) 94/2009

PROFESSOR V.G. RAMACHANDRAN

..... Petitioner

Through: Mr. Manoj Goel, Mr. Wajeeh
Shafiq, Mr. Shashank Kathuria &
Ms. Svetlana, Advs.

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Ashish Kumar, Adv. for MCI.
Mr. Amit Bansal & Ms. Manisha
Singh, Advs. for R-1/Delhi
University.
Mr. Arvind Kumar Sharma, Adv. for
R-4.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The petitioner in both petitions are Non-Medico Professors in the Department of Biochemistry and Microbiology respectively in the University College of Medical Sciences (UCMS) of the University of Delhi (University) and have filed the writ petitions impugning the Schedule I of the Medical Council of India's 'Minimum Qualifications for Teachers in Medical Institutions Regulations, 1998' and Note 2 of the Ordinance XXIV of the University adopted by the UCMS, to the extent they come in the way of their appointment as the Head of their respective Departments. Notice of the petitions was issued and vide interim order dated 8th August, 2008 in WP(C) No.5692/2008, the appointment to the post of Head of the Department (HoD) of Biochemistry was made subject to the outcome of the petition. The pleadings have been completed and the counsels have been heard.

2. The Regulations aforesaid require all medical teachers to possess a basic University or equivalent qualification included in any one of the Schedules to the Indian Medical Council Act, 1956 (MCI Act) and further requires them to be registered in a State Medical Register or Indian Medical Register. However, an exception is carved out for the Departments of Anatomy, Physiology, Pharmacology, Biochemistry and Microbiology. In the said Departments, non-medico teachers are permitted to be appointed to the extent of 50% and 30% respectively in the Departments of Biochemistry and Microbiology, of the total number of posts in the Department. It is however further provided that the Heads of these Departments must possess recognized basic University, medical degree qualification or equivalent qualification.

3. The petitioner in both petitions, as aforesaid, are Non-Medicos. They are thus, denied the appointment as HoD despite being senior most in their respective Departments. They contend (i) that HoD, as per Ordinance 23 of the University, is appointed on the basis of seniority by observing the principle of rotation; (ii) that the post of HoD is largely an administrative post; (iii) that the Regulations aforesaid, insofar as they prevent non-medicos from being appointed as HoD, are discriminatory and arbitrary and violative of their fundamental rights and deny to them equality of opportunity; (iv) that there is no reasonable and rationale relation to the differentiation so made to the suitability of the post; (v) that Ordinance XXIV of the University has also blindly adopted the Regulations aforesaid; (vi) that in other Institutes and Colleges non-medico Professors have been appointed as HoD; (vii) that the HoD allocates work to faculty members as per assessment of their capabilities, recommends leave to faculty members, non teaching staffs, takes effective steps for allocation of funds, works as the forwarding Authority, participates in the selection process of temporary staff for research projects, has authority to evaluate the projects and to recommend them for funding, writes the Annual Confidential Reports of non teaching staff, though does not get any additional emoluments for all these administrative works; (viii) the petitioner in WP(C) No.94/2009 pleads to be having much more administrative experience than the Medico Professor immediately junior to him and thus claims himself to be better qualified for the post of HoD; (ix) that their qualifications are equivalent to their medico counterparts.

4. It is further the case of the petitioners that admitting the aforesaid anomaly, the Government of India, Ministry of Health and Family Welfare, vide its communication dated 25th March, 2008 directed all the State Governments/Universities/Medical Colleges to, pending corresponding amendment to the Regulations, allow the non medico teachers of the medical college to continue to function and to be granted further promotions even though they do not fulfill the criteria prescribed in the Regulations. The petitioners thus also seek mandamus for giving effect to and compliance with the said letter of the Government of India. Axiomatically, the relief of considering the petitioners for appointment as HoD is also claimed.

5. The respondent MCI in its reply affidavit dated 9th September, 2008 has pleaded that it has been statutorily vested with the responsibility *inter alia* of maintenance of standards of medical education; that the Regulations framed by it for the said purpose are binding and mandatory for all medical colleges; that the appointments of teachers in medical colleges/institutions in contravention of the said Regulations are not recognized by the MCI; that B.Sc. and M.Sc. qualifications can be acquired from any general science college in the subjects of Biochemistry and Microbiology; however, M.Sc. and Ph.D. in Biochemistry and Microbiology are also being conducted in certain medical colleges; yet other medical colleges have provided the nomenclature of M.D. (Biochemistry or Microbiology) as a Postgraduate Medical Course for candidates possessing MBBS degree; any candidate possessing MBBS degree is eligible to be admitted to M.Sc. (Biochemistry or Microbiology) Course in medical college; that candidates possessing MBBS degree and thereafter securing qualification of M.Sc. (Biochemistry

or Microbiology) from a medical college are eligible for appointment as medical teachers in any medical college in the subject of Biochemistry or Microbiology; that medical colleges conducting M.Sc. (Biochemistry or Microbiology) are permitting admission to candidates possessing B.Sc. qualifications from general science colleges and even though not possessing MBBS decree – they are non- medico candidates holding B.Sc. qualification from a general science college and M.Sc. (Medical Biochemistry) and Ph.D. (Medical Microbiology) qualification from a medical college. Yet other candidates who have secured B.Sc. and M.Sc. qualification from a non medical college have thereafter obtained Ph.D. (Biochemistry or Microbiology) from a medical college/institutions; that though the Regulations require teachers in medical colleges to be medicos but relaxation to the extent of 30% in Microbiology and 50% in Biochemistry has been given in favour of the non-medicos qualification of B.Sc. and M.Sc. or Ph. D. from a medical college; however such candidates in whose favour relaxation has been given are not eligible to hold the post of HoD.

6. The respondent MCI in its counter affidavit, qua the letter dated 25th March, 2008 (supra) of the Government of India has pleaded that the same was placed before the Executive Council of MCI but who was of the view that it was impermissible to allow any person who is not fulfilling the minimum requirements as prescribed under the Regulations to work as a medical teacher. It is yet further pleaded that in the absence of relaxation aforesaid in the Regulations, the two petitioners were not even eligible to be appointed in UCMS.

7. UCMS in its counter affidavit has pleaded that it is a maintained institution of the University, funded by University Grants Commission and is a medical college recognized by the MCI; that the appointments of the HoD are being made in accordance with the Regulations and the Ordinance (supra); that though the petitioner in WP(C) No. 5692/2008 had been earlier officiating as HoD but that was during the absence of the HoD and on the basis of the internal arrangements within the Department and such officiating duty does not vest any right in favour of the petitioner.

8. The Union of India in its counter affidavit has referred to its letter dated 25th March, 2008 supra and in view thereof has conceded that the petitioners be considered for being appointed as HoD in consonance with the said letter.

9. The University in its counter affidavit has pleaded that the Colleges and Institutions of the University generally appoint a teacher-in-charge in every discipline to meet the functional requirement of the academic candidates; all such appointments are generally expected to follow the principle of seniority and rotation, the same has been followed by UCMS also; this is purely a functional arrangement of a College at its own level and the University has no role therein to play; that appointment as HoD does not amount to any promotion or financial upgradation; that HoD is required to maintain the academic activities; that Ordinance XXIII applies only to a University Department, appointment of HoD wherein is to be made by the Vice Chancellor; however UCMS is MCI recognized, controlled and governed by its governing body and the same is fully authorized to take

decision relating to functioning of UCMS; it is reiterated that but for the relaxation aforesaid in the Regulations permitting appointment of non medicos teacher to the extent of 30% and 50% respectively, the petitioners would not have been even eligible for appointment.

10. MCI as directed filed a response dated 2nd March, 2009 to the counter affidavit of Union of India explaining that the communication dated 25th March, 2008 was referred back to the Central Government re-emphasizing the impermissibility of any dilution in the minimum statutory requirements for the teaching faculty prescribed under the Regulations aforesaid. It is further explained that the purport of the communication dated 25th March, 2008 was only to provide for continuation of employment of non medico teachers who had been appointed on account of relaxation under the Regulations. Reference is given of *Sanjeev Gupta v. Union of India* (2005) 1 SCC 45 where a similar view of the Ministry of Health, Government of India though on a different matter was not accepted and the MCI Rule/Opinion made to prevail.

11. Dr. Dinesh Puri, appointed HoD of Biochemistry, has in his counter affidavit filed in WP(C) No. 5692/2008 pleaded that teaching of Biochemistry in the medical stream is confined not only to knowledge of biochemical and molecular basis of diseases, but also to use of this knowledge in the analysis of health problems and only a medically qualified person is suited to do this job. In comparison, it is pleaded that a non medico teacher who has background of only biochemistry and no other medical subject cannot interact with teachers of other disciplines. It is yet

further pleaded that the HoD has to interact and freely communicate to other HoDs of at least 20 different disciplines in a medical college for planning and implementing various teaching/learning activities and a person without any medical background is not equipped for this. It is pointed out that Government Institutions like Maulana Azad Medical College and Lady Hardinge Medical College do not even employ such non-medico teachers.

12. MCI also in its additional affidavit dated 24th November, 2010 has emphasized that the HoD is required to co-ordinate with other medical disciplines for academics, teaching and research process; that the Postgraduate Medical Education Regulations, 2000 contemplate horizontal and vertical integration as modality of teaching and this mandates interdepartmental coordinated integration at pre-clinical, para-clinical and clinical departments and this task can be dispensed exclusively in terms of a meaningful coordination by a HoD who is basically aware of the same by virtue of having basic degree of MBBS. It is further pleaded that important part of medical education is in fact imparted in hospitals and a person without medical degree cannot effectively coordinate the same.

13. The counsel for the petitioners, in addition to the pleas already noticed above has argued that MCI cannot regulate the qualifications for administrative post as the post of HoD is and Regulations also are concerned only with the teaching post. Reference in this regard is invited to Sections 19(1)(b) and 33 (k) and (n) of the MCI Act and Section 30(k), 45 and 2(g)(h) of the Delhi University Act. Reliance is placed on -

- (i) ***S.L. Sachdev Vs. Union of India*** (1980) 4 SCC 562 to contend that once a unified cadre has been formed, no further classification can be made.
- (ii) ***Kailash Chand Sharma Vs. State of Rajasthan*** (2002) 6 SCC 562 to contend that if the non-medicos are found good for teaching they have to be held good enough to become HoDs also.
- (iii) ***Indian Council of Legal Aid & Advice Vs. Bar Council of India*** (1995) 1SCC 732 in support of the proposition that no presumption can be drawn.
- (iv) ***V. Sudeer Vs. Bar Council of India*** (1999) 3 SCC 176 on the invocation of an enabling power.

14. The counsel for the MCI has from Section 10A, 11, 19(1)(b), 19(2) and 33(k) of the MCI Act demonstrated the power of MCI to frame Regulations. It is contended that MCI is empowered to prescribe standards of the staff also and HoD is admittedly a staff member. It is contended that the judgment in ***Government of Andhra Pradesh v. Dr. R. Murali Babu Rao*** (1988) 2 SCC 386 in the compilation of judgments handed over by the counsel for the petitioners in turn relied on the judgment in ***State of Madhya Pradesh. v. Kumari Nivedita Jain*** (1981) 4 SCC 296 which has been overruled in ***Dr Preeti Srivastava v. State of M.P.*** (1999) 7 SCC 120. It is yet further argued that the MCI Act and the Regulations framed therein are special legislation and will override Delhi University Act which is a general

Act. It is contended that MCI is an expert body and the Courts should not interfere in their decisions.

15. With reference to the *Annamalai University v. Secretary to Govt. Information and Tourism Department* (2009) 4 SCC 590 it is contended that what is held therein in relation to UGC applies equally to the MCI. Other judgments on the principle of non interference in educational/academic matters and decisions of expert bodies are cited. It is also argued that there is a presumption in favour of legislation including subordinate legislation as the Regulations are. It is highlighted that the Regulations rather than disabling non-medico teachers from becoming HoD are to be seen as enabling non-medico teachers to teach in medical colleges when they are otherwise not eligible.

16. A note on the difference between medical and non-medical teachers is also handed over. The counsel for Dr. Dinesh Puri, HoD Microbiology, has during the course of hearing handed over a note on the role of the HoD.

17. The counsel for the Delhi University has contended that the portion of Ordinance XXIV to which challenge is made is in consonance with the MCI Regulations and has reiterated that Ordinance XXIII is applicable only to the University Departments and is not applicable to UCMS.

18. The counsel for the petitioners in rejoinder has argued that Biochemistry is a stand alone subject and no co-ordination with the HoD as alleged is required. It is contended that as professors, the non-medico teachers are in any case interacting with the other Departments.

19. We have devoted considerable length of this judgment to record the pleas and contentions of the respective parties and which explain the entire perspective. Our decision on the basis thereof is as under:

- (i). The MCI Act has constituted the MCI as an expert body to control the minimum standards of Medical Education and to regulate their observance. Obviously the high powered Council has power to prescribe the minimum standards of medical education (See *State of Kerala Vs. Kumari T.P. Roshana* (1981) 4 SCC 512). MCI thus has implicit power to supervise the qualifications or eligibility standards for teachers and staff in Medical College.
- (ii). The requirement under the Regulations aforesaid is for the said teachers to be having qualifications in the field of medicine.
- (iii). The Regulations, insofar as they permit non medicos to also teach in certain Departments of Medical Colleges are an exception to the general rule. While carving out the said exception, care has been taken to limit the role of such non-medico teachers i.e. of their being not eligible to be appointed as HoD.
- (iv). The letter dated 25th March, 2008 was issued on receipt of representation from non-medico teachers appointed as per the MCI Teachers Eligibility Qualifications Regulations 1971 who had become ineligible upon the coming into force of the 1998

Regulations and were being removed from their posts. The same has nothing to do with the matter in controversy.

- (v). The legislature having constituted the MCI as the expert body to lay down the standards of education in a medical college, the Government does not have any authority to alter the Regulations framed in this regard. The communication dated 25th March, 2008 of the Government of India is thus of no avail.
- (vi). Just like there was a reason for permitting non-medico teachers in certain Departments, similarly it can safely be assumed that there was a reason for preventing them from becoming HoD.
- (vii). The Regulations also prohibit a non-medico from being appointed as Director or Principal or Dean or a Medical Superintendent. No challenge thereto is made. The HoD is the lowest step in the ladder to Director, Principal, Dean and Medical Superintendent. When the non-medico teachers are not to climb the ladder, there can be no discrimination in their being denied to take the first step thereto.
- (viii). The non-medico teachers clearly fall in a different class than the medical teachers. The question of discrimination thus does not arise. As far as the nexus of the classification to the object sought to be achieved is concerned, it appears to have been felt that a non-medico HoD would be handicapped in some way and

which handicap will ultimately affect the functioning of the medical college and the education of its students.

(ix). Each of the petitioners joined employment with full knowledge of the limitation as far as appointment as HoD is concerned.

(x). This Court, for the sake of providing equality to teachers distinctly belonging to separate class, cannot put the fate of the students at risk. Even otherwise, in a medical college the emphasis is on imparting knowledge to enable the students to become good doctors and it is felt that a medico teacher in the subjects of Biochemistry or Microbiology can provide a more wholesome guidance than a non-medico teacher in the same subject.

(xi). Appointment of non medico teacher as HoD is also likely to result in discipline issues in the Department.

20. We therefore do not find any merit in these petitions and dismiss the same.

No costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

SEPTEMBER 18 , 2012
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